

REMARKS

By this Amendment, Applicants have amended claim 32. Upon entry of this Amendment, claims 17-32 remain pending and under examination. For the reasons presented herein, Applicants traverse the objection and rejections set forth in the Office Action¹, wherein the Examiner:

(a) objected to the drawings;

(b) rejected claim 32 under 35 U.S.C. § 101 as being directed to non-statutory subject matter;

(c) rejected claims 20 and 28 under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement; and

(d) rejected claims 17-32 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,130,263 ("Ong") in view of U.S. Patent App. Pub. No. 2004/0057375 ("Shiragaki").

Regarding the Objection to the Drawings

The Examiner objected to Figs. 1-2 for not being labeled as "Prior Art." See Office Action, p. 2. In response, Applicants attach to this paper a replacement sheet of drawings, in which Figs. 1 and 2 have been labeled "Prior Art." Accordingly, Applicants deem the objection to the drawings overcome.

Regarding the 35 U.S.C. § 101 Rejection of Claim 32

The Examiner rejected claim 32 "because the claimed invention is directed to non-statutory subject matter." Office Action, p. 2. In response to this rejection, and

¹ The Office Action contains statements characterizing the related art and the claims. Regardless of whether any such statements are specifically identified herein, Applicants decline to automatically subscribe to any statements in the Office Action.

without conceding to the Examiner's arguments regarding alleged non-statutory subject matter, Applicants have amended claim 32. Applicants deem this rejection overcome, and respectfully request its withdrawal.

**Regarding the 35 U.S.C. § 112, First Paragraph, Rejection of
Claims 20 and 28**

The Examiner rejected claims 20 and 28 because "[t]he claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains . . . to make and/or use the invention." Office Action, pp. 2-3. In particular, the Examiner alleged that "[t]he phrase 'non-coextensive paths' is not clearly defined in either the claims or specification." Office Action, p. 3. Applicants respectfully disagree.

Applicants direct the Examiner's attention to the specification at, for example, page 9, lines 3-7, and Figs. 4-6. In view of Figs. 4-6, and the meaning of "non-coextensive" that would be understood by one of ordinary skill in the art ("non-coextensive" meaning "not having the same spatial scope or boundaries," that is, the paths are not immediately next to each other), Applicants point out that Figs. 4-6 show a "ring structure including non-coextensive paths and . . . two protecting channels [associated] to respective non-coextensive paths in said ring" (claim 20, and similar language in claim 28).

The above cited disclosure shows that the claimed subject matter more than adequately satisfies the enablement requirement of 35 U.S.C. § 112, first paragraph. Accordingly, Applicants respectfully request reconsideration and withdrawal of this rejection.

Regarding the 35 U.S.C. § 103(a) Rejection of Claims 17-32

Applicants request reconsideration and withdrawal of the rejection of claims 17-32 under 35 U.S.C. § 103(a) as being unpatentable over Ong in view of Shiragaki.

The Examiner has not properly resolved the *Graham* factual inquiries, the proper resolution of which is the requirement for establishing a framework for an objective obviousness analysis. See M.P.E.P. § 2141(II), citing to *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), as reiterated by the U.S. Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, 82 USPQ2d 1385 (2007).

In particular, the Examiner has not properly determined the scope and content of the prior art. Specifically, Ong and Shiragaki do not teach or suggest what the Examiner attributes to them. In addition, the Examiner has not properly ascertained the differences between the claimed invention and the prior art, at least because he has not interpreted the prior art and considered both the invention and the prior art as a whole. See M.P.E.P. § 2141(II)(B).

Ong and Shiragaki, taken alone or in combination, do not teach or suggest at least Applicants' claimed:

whereby one of said at least two protection channels in said stand-by state is adapted to ensure recovery of extra traffic carried by the other of said at least two protection channels while one of the following conditions is met: said other of said at least two protection channels is switched to said active state, and said other of said at least two protection channels is subject to failure (claim 17 and 25).

The Examiner admitted that Ong "does not expressly disclose" the above quoted claim recitations. See Office Action, pp. 8-9. The Examiner then alleged that Shiragaki teaches the missing claim recitations. See Office Action, pp. 9 and 11. Shiragaki does not, however, teach these missing claim recitations.

Shiragaki teaches a ring topology network with first and second working rings and first and second protection paths. See Shiragaki, Abstract. Further, Shiragaki teaches that “[i]n this network, low priority signals, or extra traffic are carried by protection rings 102 and 104.” Shiragaki, para. 84. Shiragaki acknowledges that “the extra-traffic paths must be cleared before a protection path is established for normal traffic” Shiragaki, para. 85. Shiragaki further discloses the reason for its disclosed design: since “the shorter side of a ring between nodes 106 and 107 has a smaller number of extra-traffic paths than its longer side . . . it is advantageous to first clear the extra-traffic path on the shorter side of a ring when a working path 11 between nodes 106 and 107 fails.” Shiragaki, para. 86.

Shiragaki then teaches a method of operation whereby if a failure occurs on the working path, node 106 clears the shorter protection path. See Shiragaki, para. 91. If the shorter protection path is working, the normal traffic is transmitted on the shorter protection path. See Shiragaki, para. 92. If, however, the shorter protection path is not working, the system clears the extra traffic from the longer protection path, tests the longer protection path, and if it is working, transmits the normal traffic on the longer protection path. See Shiragaki, paras. 95-96.

This process is succinctly summarized in Shiragaki paragraph 102:

It is seen therefore that in a four-ring topology network where a number of extra traffic paths are established on protection routes, the extra traffic paths on a short protection route are first cleared to establish a short protection path. If this protection path is not established within a prescribed interval due to an additional failure, then the extra paths on a longer route are cleared to establish a longer protection path.

Therefore, Shiragaki teaches using a short protection path to ensure recovery of normal traffic. Further, if the short protection path fails, a longer protection path is used to recover normal traffic. Therefore, Shiragaki, whether taken alone or in combination with Ong, does not teach or suggest at least Applicants' claimed:

whereby one of said at least two protection channels in said stand-by state is adapted to ensure recovery of extra traffic carried by the other of said at least two protection channels while one of the following conditions is met: said other of said at least two protection channels is switched to said active state, and said other of said at least two protection channels is subject to failure (claims 17 and 25, emphasis added).

Thus, Ong and Shiragaki, taken alone or in combination, do not render obvious Applicants' independent claims 17 and 25. In view of the reasoning presented above, Applicants therefore submit that independent claims 17 and 25 are not obvious and should therefore be allowable. Dependent claims 18-24 and 26-32 should also be allowable at least by virtue of their respective dependence from non-obvious base claim 17 or 25. Accordingly, Applicants request withdrawal of the 35 U.S.C. § 103(a) rejection.

Conclusion

Applicants respectfully request reconsideration of the application and withdrawal of the objection and rejections. Pending claims 17-32 are not rendered obvious by the cited references. Accordingly, Applicants request allowance of the pending claims.

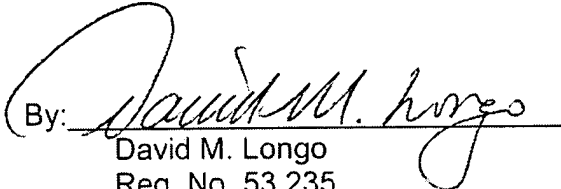
If there are any remaining issues or misunderstandings, Applicants request the Examiner telephone the undersigned representative to discuss them.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

Dated: February 13, 2009

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Attachments: One (1) Replacement Sheet containing Figs. 1-3